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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2008-0066
	)	DEPARTMENT A
	)	
IN RE MANUEL M.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. JV-03-377

Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED

George Silva, Santa Cruz County Attorney
By Jose A. Vazquez — Nogales
Attorneys for State

Michael H. Vaughan — Tucson
Attorney for Minor

H O W A R D, Presiding Judge.

¶1 Manuel M. appeals from the juvenile court's June 2008 order adjudicating him delinquent for having unlawfully possessed cocaine, a narcotic drug, and having done so in a drug-free school zone.[1] He argues the evidence at his adjudication hearing was insufficient

[1]The juvenile court ordered Manuel committed to the custody of the Arizona Department of Juvenile Corrections for a minimum of twelve months and placed in a level IV secure facility.

to support the court's required finding that he knowingly possessed the drug. *See* A.R.S. § 13-3408(A)(1).[2]

¶2 On appeal from a juvenile court's adjudication of delinquency, "we review the evidence and resolve all reasonable inferences in the light most favorable to upholding its judgment." *In re Jessi W.*, 214 Ariz. 334, ¶ 11, 152 P.3d 1217, 1219 (App. 2007). Circumstantial evidence that a juvenile committed the charged offense may be sufficient to support a delinquency adjudication, *see In re Andrew A.*, 203 Ariz. 585, ¶ 10, 58 P.3d 527, 529 (App. 2002), and we do not reweigh the evidence on appeal, *In re James P.*, 214 Ariz. 420, ¶ 24, 153 P.3d 1049, 1054 (App. 2007). Thus, we will not reverse a delinquency adjudication for insufficient evidence unless "there is a complete absence of probative facts to support the judgment or . . . the judgment is contrary to any substantial evidence." *In re John M.*, 201 Ariz. 424, ¶ 7, 36 P.3d 772, 774 (App. 2001).

¶3 Manuel was charged after a teacher at his high school observed another student hand something to Manuel and saw Manuel hide the object behind his back after he noticed the teacher was watching. After the teacher confronted the students and found they had nothing in their hands, he looked behind Manuel's back, saw a lump beneath his shirt,

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[2]Pursuant to § 13-3408(A)(1), it is unlawful for a person to "knowingly . . . [p]ossess or use a narcotic drug." Section 13-3411(A)(2), A.R.S., further makes it "unlawful for a person to . . . [p]ossess or use . . . narcotic drugs in a drug free school zone." "'Possess' means knowingly to have physical possession or otherwise to exercise dominion or control over property." A.R.S. § 13-105(30). "'Knowingly' means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission." § 13-105(9)(b).

and asked, "What's this[?]" The teacher then reached beneath Manuel's shirt and pulled out a plastic bag containing a white, powdery substance. Later, after Manuel's mother had arrived, a Nogales police officer advised him of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and asked if he knew what was in the plastic bag found under his shirt. According to the officer, Manuel responded, "Cocaine."

¶4 Manuel contends on appeal, as he did below, that this evidence was insufficient to establish that he had knowingly possessed cocaine when the plastic bag was handed to him because his "admission was after the fact, after the substance was tested and preliminarily confirmed to be cocaine by the investigative officer." He argues there was no evidence that he knew the contents of the bag before it was seized and claims he had had no opportunity to examine the bag when the other student had handed it to him. At the adjudication hearing, Manuel's counsel argued this created a reasonable doubt about whether Manuel knowingly possessed cocaine, suggesting he might have been able to identify the substance as cocaine because the bag was later placed in front of him during questioning.

¶5 The juvenile court reasoned, however, that it was Manuel, not the officer, who had used the word "cocaine" during questioning. Indeed, nothing in the record suggests the officer did anything to prompt Manuel's response other than asking him if he knew what was in the bag. Nor does the record suggest any reason Manuel would have learned the bag contained cocaine only after it had been taken from him. As Manuel's counsel pointed out when cross-examining the officer, based on visual examination alone, without testing or prior

knowledge of what the bag contained, the substance could have been sugar, salt, or "Dra[]no."

¶6 Based on Manuel's conduct in attempting to hide the bag as the teacher approached and his later admission that the substance was cocaine, the juvenile court found beyond a reasonable doubt that Manuel had knowingly possessed cocaine. We conclude the court's inferences were reasonable and the evidence sufficient to support the adjudication.[3] *See Andrew A.*, 203 Ariz. 585, ¶ 10, 58 P.3d at 529; *see also State v. Fulminante*, 193 Ariz. 485, ¶ 26, 975 P.2d 75, 84 (1999) (direct evidence not required; sufficiency of evidence dependent on totality of circumstances). We therefore affirm.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge

[3]We find no merit to Manuel's suggestion that the .26 gram of cocaine taken from him was a "relatively small quantity" and that we should consider this as an "additional factor" in determining whether Manuel knowingly possessed the cocaine. In *State v. Cheramie*, 218 Ariz. 447, ¶ 21, 189 P.3d 374, 378 (2008), our supreme court clarified that, although proof of "[a] 'usable quantity' is neither an element of the possession offense nor necessary to sustain a conviction for it," it may be useful circumstantial evidence "in a case involving such a small amount that one might question whether the defendant knew of the presence of drugs, to show that the defendant 'knowingly' committed the acts" proscribed by statute. *Id*. There is no suggestion here that Manuel was unaware he had the bag he had accepted from another student and had hidden in his clothing. And, as we have already discussed, other evidence was sufficient to establish that he knew the bag contained cocaine.